

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

AUG 7 - 2007

FCC Docket No. 05-337

In the Matter of)

)

Iowa Telecom Petition for Forbearance Under
47 U.S.C. § 160(c) from the Universal Service
High-Cost Loop Support Mechanism)

WC Docket No. 05-337

ORDER

Adopted: August 6, 2007

Released: August 6, 2007

By the Commission:

I. INTRODUCTION

1. In this Order, we deny a petition filed by Iowa Telecommunications Services, Inc. (Iowa Telecom, or Petitioner) requesting that the Commission forbear from enforcing certain sections of the Commission's rules to permit Iowa Telecom to be eligible for high-cost universal service support under the non-rural mechanism, rather than under the high-cost loop support mechanism for rural carriers.¹ Specifically, the Petitioner requests that the Commission forbear from enforcing sections 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to permit Iowa Telecom to be eligible for high-cost universal service support based on its network's forward-looking economic costs.² For the reasons set forth below, we find that the requested forbearance would not give Iowa Telecom the relief it seeks, and that it fails to satisfy the requirements of section 10 of the Communications Act of 1934, as amended (the Act).³ We therefore deny Iowa Telecom's Forbearance Petition.

II. BACKGROUND

2. The Telecommunications Act of 1996 (1996 Act)⁴ codified the Commission's historical commitment to promote universal service of telecommunications services to all Americans.⁵ In section

¹ Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanisms, WC Docket No. 05-337 (filed May 8, 2006) (Forbearance Petition).

² See Forbearance Petition at 1; 47 C.F.R. §§ 36.601-36.631, 54.305, 54.309, 54.313, 54.314. Iowa Telecom also filed a petition requesting, in the alternative, waiver of these rules. *Iowa Telecom Petition for Interim Waiver of the Commission's Universal Service High-Cost Loop Support Mechanisms*, WC Docket No. 05-337 (filed May 8, 2006) (Waiver Petition). On June 2, 2006, the Commission released a Public Notice establishing a pleading cycle for comments on the Iowa Telecom Forbearance and Waiver Petitions. *Iowa Telecom Services, Inc., Seeks Forbearance from or Waiver of the Commission's Universal Service Rules to Permit it To Be Eligible for Universal Service Support under the High-Cost Mechanism for Non-Rural Carriers*, WC Docket No. 05-337, Public Notice, 21 FCC Rcd 6272 (Wireline Comp. Bur. 2006). A list of parties filing comments in this proceeding is contained in the Appendix to this order.

³ 47 U.S.C. § 160(c).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

254 of the Act, Congress instructed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board), to establish specific, predictable, and sufficient support mechanisms to preserve and advance universal service.⁶ In addition, Congress articulated a national goal that consumers in all regions of the nation, including rural, insular, and high-cost areas, should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.⁷

3. In implementing the universal service provisions of the Act, and in particular the high-cost support mechanism, the Joint Board and the Commission have consistently recognized that rural carriers face diverse circumstances and that "one size does not fit all."⁸ When the Commission determined, in the 1997 *Universal Service First Report and Order*, that high-cost universal service support should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services, it also determined that rural carriers' support would not begin to be based on forward-looking economic cost until further review.⁹ In reaching this conclusion, the Commission recognized, consistent with the Joint Board's recommendation, that, compared to the large non-rural carriers, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit as much as non-rural carriers do from economies of scale and scope.¹⁰ The Commission determined that rural carriers would begin receiving support based on forward-looking

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⁵ 47 U.S.C. § 254.

⁶ *Id.*

⁷ 47 U.S.C. § 254(b)(3).

⁸ E.g., *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11247, para. 4 (2001) (*Rural Task Force Order*).

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8888-89, paras. 199, 203 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

¹⁰ *Id.* at 8936, para. 294. Based on a Joint Board recommendation, in 1997 the Commission adopted, for universal service purposes, a definition of rural carrier that mirrored the definition of "rural telephone company" found in section 153 of the Act. *Id.* at 8943-44, para. 310. Pursuant to this definition, a rural telephone company is a local exchange carrier operating entity to the extent that the entity:

(A) provides common carrier service to any local exchange carrier study area that does not include either:

- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
- (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 U.S.C. § 153(37). There was no statutory requirement, however, that the Commission use this definition for universal service purposes.

economic costs “only when [the Commission has] sufficient validation that forward-looking support mechanisms for rural carriers produce results that are sufficient and predictable.”¹¹

4. In the 1999 *Ninth Report and Order*, the Commission adopted a universal service support mechanism based on forward-looking economic costs for non-rural carriers.¹² Rather than attempting to modify the forward-looking economic cost mechanism, the Rural Task Force, which was appointed to consider the appropriate mechanism for rural carriers, recommended the continued use of embedded costs to determine high-cost support for rural carriers for a five-year period.¹³ Based on these recommendations, and those of the Joint Board,¹⁴ the Commission adopted a modified embedded cost mechanism for a five-year period in the 2001 *Rural Task Force Order*.¹⁵ In the 2004 *Rural Referral Order*, the Commission asked the Joint Board to review the Commission’s rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*.¹⁶ In May 2006, the Commission extended the high-cost universal service support rules adopted in the *Rural Task Force Order* on an interim basis until the Commission concludes its rural review proceeding and adopts changes, if any, to those rules.¹⁷ The Joint Board recently sought comment on various proposals for rural high-cost support reform and plans to make further recommendations regarding comprehensive high-cost universal service reform by November 1, 2007.¹⁸

¹¹ *Universal Service First Report and Order*, 12 FCC Rcd at 8917, para. 252.

¹² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) (*Qwest I*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003), remanded, *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*); *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (*Non-Rural High-Cost Notice*); see also *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (1999) (*Tenth Report and Order*), affirmed, *Qwest I*, 258 F.3d 1191.

¹³ Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-45 (dated Sept. 29, 2000) (*Rural Task Force Recommendation*).

¹⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 16 FCC Rcd 6153 (Fed.-State Jt. Bd. 2001); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 16 FCC Rcd 6141 (2001).

¹⁵ *Rural Task Force Order*, 16 FCC Rcd 11244. The high-cost universal service support rules adopted in the *Rural Task Force Order* were later modified in *Federal-State Joint Board on Universal Service, National Telephone Cooperative Association Petition for Reconsideration*, CC Docket No. 96-45, Order and Order on Reconsideration, 20 FCC Rcd 768 (2005) (*Rural Task Force Reconsideration Order*), and extended in *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (*Rural Task Force Extension Order*).

¹⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004) (*Rural Referral Order*).

¹⁷ *Rural Task Force Extension Order*, 21 FCC Rcd 5514.

¹⁸ See *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023 (Fed.-State Jt. Bd. 2007) (*Joint Board 2007 Public Notice*). The Joint Board also recommended that the Commission take immediate action to impose an interim cap on the amount of high-cost support that competitive eligible

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5. Iowa Telecom is a rural, price-cap local exchange carrier (LEC) serving approximately 250,000 lines in Iowa, which acquired its exchanges from GTE in 2000.¹⁹ Currently, Iowa Telecom receives interstate access support (IAS), but does not receive any other high-cost support, except for the support received by its separately operated Montezuma Mutual Telephone Company (Montezuma).²⁰ Iowa Telecom claims that providing high-cost support to Iowa Telecom based upon embedded cost-based methodologies undermines section 254's universal service goals, because the low embedded cost of the network Iowa Telecom acquired from GTE in 2000 results in zero high-cost loop support for Iowa Telecom.²¹ Iowa Telecom asserts that it invested nearly \$32 million in 2001, another \$34 million in 2002, and additional amounts in subsequent years, but nevertheless received no safety valve support because its historical costs remain too low to qualify for support.²²

6. On May 8, 2006, Iowa Telecom filed a petition asking the Commission to forbear from enforcing sections 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to permit Iowa Telecom to be eligible for high-cost universal service support based on its network's forward-looking economic costs and on the non-rural mechanism.²³ Iowa Telecom requests that forbearance be effective "until such time as the FCC adopts a final successor regime to the *Rural Task Force Order* that allows Iowa Telecom to receive loop support based on its network's forward-looking economic costs."²⁴ On April 6, 2007, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended by ninety days, to August 6, 2007, the date by which Iowa

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telecommunications carriers (ETCs) may receive. *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007); *see also* *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007).

¹⁹ When Iowa Telecom filed its petitions, it stated that it had over 240,500 total lines. *See* Forbearance Petition, Appendix at 2. Based on the most recent data filed by the Universal Service Administrative Company (USAC), Iowa Telecom's three study areas have a little over 250,000 working loops. *See* Universal Service Administrative Company (USAC), Quarterly Administrative Filing 2007, Third Quarter (3Q) Appendices, at HC05 (filed May 2, 2007) (USAC 3Q 2007 filing).

²⁰ Montezuma has 2,210 working loops. *See* USAC 3Q 2007 filing, at HC05. Although Iowa Telecom claims to be "the nation's only rural telephone company that operates exclusively under price cap regulation," Montezuma, which Iowa Telecom operates on a non-integrated basis, is a rural rate-of-return company. *See* Forbearance Petition, Appendix at 2 & n.5. Based on USAC's most recent estimates, in 2007 Iowa Telecom will receive approximately \$4.8 million in IAS, and Montezuma will receive approximately \$81,000 in high-cost loop support, \$128,000 in local switching support, and \$192,000 in interstate common line support (ICLS). *See* USAC 3Q 2007 filing, Appendices, at HC01.

²¹ Forbearance Petition at 4-5.

²² *See* Forbearance Petition, Appendix at 13-16 & n.52. Safety valve support allows rural carriers to receive additional high-cost loop support to reflect significant investments in the infrastructure of the acquired exchanges. Safety valve support is based on 50 percent of the difference between the support calculated under the high-cost loop support mechanism in the index year and subsequent years. If a carrier's costs are not high enough to qualify for high-cost loop support, it also would not qualify for safety valve support. *See* 47 C.F.R. § 54.305(d)-(f).

²³ *See* Forbearance Petition at 1; 47 C.F.R. §§ 36.601-36.631, 54.305, 54.309, 54.313, 54.314.

²⁴ *See* Forbearance Petition at 1; *see also* *Rural Task Force Order*, 16 FCC Rcd 11244.

Telecom's forbearance petition shall be deemed granted in the absence of a Commission decision that the Petition fails to meet the standard for forbearance under section 10(a) of the Act.²⁵

III. DISCUSSION

A. General Basis for Denial

7. As an initial matter, we conclude that forbearance from rules 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 would not give the Petitioner the relief it seeks. Iowa Telecom seeks to use section 10 forbearance to create a new category of high-cost universal service support, i.e., support for a rural carrier receiving high-cost universal service support based on its forward-looking economic costs under the non-rural mechanism.²⁶ Section 10 is not the proper procedural device to request such relief. First, forbearance from these rules would not result in Iowa Telecom receiving support under the non-rural mechanism. Second, contrary to Iowa Telecom's contention, the non-rural high-cost support mechanism is not a default rule of general applicability, and the Joint Board and the Commission have never found that the current non-rural forward-looking cost model should be used to determine rural carriers' high-cost support.²⁷ We therefore deny the Forbearance Petition.

8. Forbearance from the rules identified by Petitioner would not result in it receiving high-cost support under the non-rural mechanism. Section 54.305 provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.²⁸ Since GTE did not receive high-cost support in Iowa at the time of the acquisition, Iowa Telecom is similarly not eligible for support, consistent with this rule. Forbearance from section 54.305, however, would not provide Petitioner with high-cost loop support as long as its costs remain too low to qualify under the rural support mechanism,²⁹ nor would it move Iowa Telecom from the rural support mechanism to the non-rural support mechanism. Sections 36.601-36.631 of the Commission's rules specify the method for calculating high-cost loop support for rural carriers.³⁰ Forbearing from these rules would not provide Iowa Telecom with high-cost support under the non-rural mechanism, which is calculated and distributed pursuant to section 54.309, and from which Iowa Telecom also asks us to forbear.³¹ Sections 36.611 and 36.612 require rural and non-rural incumbent LECs to file certain line count information upon which support is based.³² If the Commission were to forbear from these requirements, the line count data needed to calculate support for

²⁵ *Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanisms*, WC Docket No. 05-337, Order, 22 FCC Rcd 6805 (Wireline Comp. Bur. 2007).

²⁶ We note that, in other instances, when a non-rural carrier sought to receive high-cost loop support based on its embedded costs, the Commission sought comment in a Notice of Proposed Rulemaking. See *Non-Rural High-Cost Notice*, 20 FCC Rcd at 19732, para. 1, 19744-48, paras. 30-38.

²⁷ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 8935, para. 293 (recognizing that existing forward-looking cost mechanisms "cannot presently predict the cost of serving rural areas with sufficient accuracy"); *Rural Task Force Order*, 16 FCC Rcd at 11256, para. 25 (finding that the record does not support a transition of rural carriers to a forward-looking high-cost mechanism, and additional time is necessary to develop an appropriate forward-looking cost mechanism for rural carriers).

²⁸ See 47 C.F.R. § 54.305(b).

²⁹ See *supra* para. 5.

³⁰ 47 C.F.R. §§ 36.601-36.631.

³¹ 47 C.F.R. § 54.309.

³² 47 C.F.R. §§ 36.611, 36.612.

Iowa Telecom under the non-rural mechanism pursuant to section 54.309 would not be available.³³ Sections 54.313 and 54.314 require states that want non-rural and rural carriers, respectively, to receive support to certify that support provided to carriers within their jurisdiction will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.³⁴ Forbearing from these sections would allow Iowa Telecom to receive support without state certification, but would have no effect on what type of support, rural or non-rural, Iowa Telecom would be eligible to receive. In sum, forbearing from these rules would simply create a vacuum rather than enabling Iowa Telecom to receive support under the non-rural mechanism.³⁵

9. Additionally, we do not agree with Iowa Telecom's contention that the non-rural mechanism is a default rule of general applicability, and that, if the rural high-cost support rules did not apply to Iowa Telecom, it would automatically receive support under the non-rural mechanism. In particular, Iowa Telecom seeks forbearance from "the current universal service carve-out for rural carriers to permit receipt of support available to all other carriers under the default non-rural mechanism."³⁶ Iowa Telecom claims that the rural high-cost support mechanism based on embedded costs is an exception to the general Commission policy that universal service support should be based on forward-looking economic costs, and that it seeks forbearance to allow the default rule of general applicability to apply.³⁷ We find Petitioner's argument unpersuasive.

10. Iowa Telecom's claim that support based on forward-looking economic cost is "a cornerstone" of the Commission's universal service reform efforts reflects general policy goals that were originally set forth a decade ago, but have not as of yet been implemented for rural carriers.³⁸ Iowa Telecom claims that the Commission, in the *First Universal Service Report and Order*, "establish[ed] that the level of support for service to a particular customer will ultimately be determined based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide that service."³⁹ Iowa Telecom argues that the Commission reiterated in the *Rural Task Force Order* that "rural carriers would shift gradually to a forward-looking economic cost methodology,"⁴⁰ and again intimated in the *Rural Referral Order* that "support based on forward-looking economic cost

³³ 47 C.F.R. § 54.309(a)(4).

³⁴ 47 C.F.R. §§ 54.313, 54.314.

³⁵ See *Fones4All Corp. Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service*, WC Docket No. 05-261, Memorandum Opinion and Order, 21 FCC Rcd 11125, 11130, para. 9 (2006) (The Commission denied forbearance because "[f]orbearing from the rule . . . would simply create a vacuum rather than confer any rights upon requesting carriers or obligations upon incumbent LECs."), *appeal pending*, *Fones4All Corporation v. FCC*, No. 06-75388 (9th Cir., filed Nov. 21, 2006).

³⁶ See Iowa Telecom Reply Comments at 16.

³⁷ See *id.*

³⁸ Forbearance Petition, Appendix at 4 (arguing that "a cornerstone of [the Commission's universal service] reform is that, absent some compelling circumstances, the appropriate basis to determine eligibility for high-cost support is a carrier's forward-looking economic cost"); see also Forbearance Petition at 3 ("The long-standing policy of the FCC is that a carrier should receive high-cost loop support based upon the forward-looking economic cost of its network absent compelling reasons in specific circumstances.").

³⁹ See *id.*, Appendix at 4 & n. 10 (quoting *Universal Service First Report and Order*, 12 FCC Rcd at 8888, para. 199).

⁴⁰ *Id.*, Appendix at 7 (quoting *Rural Task Force Order*, 16 FCC Rcd at 11247, para. 4).

estimates, rather than embedded costs, would send the correct signals for entry, investment, and innovation.”⁴¹ Both of these references, however, are in background sections describing the Commission’s previous statements.

11. Moreover, Iowa Telecom ignores the fact that the Commission has not as of yet adopted a forward-looking cost standard to determine rural carriers’ support because of concerns regarding the ability of existing forward-looking cost mechanisms to accurately predict the cost of serving rural areas,⁴² and the lack of suitable rural input values for use in any forward-looking mechanism.⁴³ On a number of occasions, the Commission has found that the modified embedded cost rules for rural carriers continue to be reasonable.⁴⁴ Further, the Joint Board sought comment on, and is considering, a number of reform proposals that would not use forward-looking economic costs to determine support.⁴⁵ In addition, in response to the issues raised by the decision of the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in *Qwest II*, the Commission sought comment regarding a rate-based universal service support mechanism for non-rural carriers.⁴⁶ Although the Commission has had a policy goal of moving carriers to a forward-looking economic cost support mechanism, it remains just that – a goal. Thus, Iowa Telecom fails to persuade us that the Commission’s non-rural support rules represent the default regime.

12. Accordingly, in light of the fact that forbearance from the rules identified by Petitioner would not result in it receiving support under the non-rural mechanism, and the fact that the non-rural mechanism is not a default rule of general applicability, we deny the Forbearance Petition.

⁴¹ *Id.* (quoting *Rural Referral Order*, 19 FCC Rcd at 11539-40 n.8).

⁴² See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 8935, para. 293 (recognizing that existing forward-looking cost mechanisms “cannot presently predict the cost of serving rural areas with sufficient accuracy”); *Rural Task Force Order*, 16 FCC Rcd at 11256, para. 25 (finding that the “present record fails to provide the analysis necessary to permit a transition of rural carriers to a forward-looking high-cost support mechanism”).

⁴³ *Rural Task Force Order*, 16 FCC Rcd at 11313, para. 177 (“Even those commenters who urge the Commission to move to forward-looking cost for rural carriers recognize that the Commission would need additional time to develop suitable rural input values.”).

⁴⁴ See e.g., *id.* at 11256, para. 25 (“We find that continuing to base support for rural carriers on embedded cost for the next five years is a reasonable and prudent approach to take in light of the record before us.”). In the *Rural Referral Order*, the Commission asked the Joint Board to “consider whether a universal service mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs would most efficiently and effectively achieve the Act’s goals.” *Rural Referral Order*, 19 FCC Rcd at 11542, para. 8. See also Statement of (then) Commissioner Kevin J. Martin, *id.* at 11546 (“I am troubled by today’s decision to revisit whether the Commission should adopt a universal service support mechanism for rural carriers based on hypothetical forward-looking economic costs. . . . In my view, we could better achieve sufficient universal service support and comparability of rates if we base our universal service support system on actual rather than forward-looking costs.”).

⁴⁵ See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (Fed.-State Jt. Bd. 2004); *Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (Fed.-State Jt. Bd. 2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006).

⁴⁶ See *Non-Rural High-Cost Notice*, 20 FCC Rcd at 19742-43; *Qwest II*, 398 F.3d at 1237.

B. Application of the Section 10 Forbearance Criteria

13. We conclude that, even if forbearance would provide Iowa Telecom with the relief it is seeking, Iowa Telecom has failed to demonstrate that its forbearance request meets the requirements of section 10 of the Act.⁴⁷ For the Commission to grant the forbearance requested by Iowa Telecom, we must determine that the elements of section 10 of the Act are satisfied. In particular, section 10(a) provides that:

The Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that –

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.⁴⁸

With regard to the public interest determination required by section 10(a)(3), section 10(b) requires the Commission to “consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”⁴⁹ Further, “[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.”⁵⁰

1. Sections 10(a)(2) and (3)

14. Iowa Telecom has failed to demonstrate that the high-cost universal service support rules are not necessary for the protection of consumers or that forbearance is in the public interest. On the contrary, we find, as explained below, that, although providing Iowa Telecom with high-cost support under the non-rural mechanism could potentially benefit some consumers in Iowa, doing so would harm consumers in ten other states that would lose support if we were to grant Iowa Telecom’s request. We further find that forbearance would not serve the public interest because we do not find that the potential benefits to consumers in Iowa would outweigh the harm to consumers in the ten states that would lose support, and it is not clear to what extent Iowa consumers would benefit or the public interest would be served if we were to grant Iowa Telecom’s request for relief. Finally, it is not in the public interest to provide Iowa Telecom with support under the non-rural mechanism due to data problems associated with applying the mechanism to Iowa Telecom.

⁴⁷ 47 U.S.C. § 160.

⁴⁸ 47 U.S.C. § 160(a).

⁴⁹ 47 U.S.C. § 160(b).

⁵⁰ 47 U.S.C. § 160(b).

15. A provision or regulation is “necessary” if there is a strong connection between the requirement and regulatory goal.⁵¹ In section 254(b) of the Act, Congress provided a list of principles upon which the Commission must base policies for the preservation and advancement of universal service.⁵² Among other things, section 254(b) provides that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas.”⁵³ Consistent with this statutory directive, the Commission’s high-cost universal service rules are designed to ensure that consumers have access to telecommunications service in areas where the cost of such service otherwise might be prohibitively expensive.⁵⁴

16. Because rural carriers generally have higher operating and equipment costs, due to lower subscriber densities, small exchanges, and lack of economies of scale, the Commission determined that support for rural carriers should continue to be based on embedded costs, rather than forward-looking costs, for the duration of the *Rural Task Force Order* rules.⁵⁵ The Commission found that “providing support based on embedded costs will provide important certainty to rural carriers, which generally receive a greater portion of their revenues from universal service support mechanisms than non-rural carriers.”⁵⁶ The modifications to the embedded cost mechanism proposed by the Rural Task Force and adopted by the Commission were “generally designed to provide carriers serving rural areas with increased incentives to invest in new infrastructure and technologies.”⁵⁷ Basing support on embedded costs allows rural LECs to receive more support if they increase their costs by investing in their networks. Therefore, unlike support based on forward-looking costs, the modified embedded cost mechanism provides more direct incentives to the rural LEC to invest.⁵⁸

⁵¹ See *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 16000 (2005) (*TracFone Forbearance Order*); *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

⁵² 47 U.S.C. § 254(b)(1)-(7).

⁵³ 47 U.S.C. § 254(b)(3).

⁵⁴ See, e.g., *Rural Task Force Order*, 16 FCC Rcd at 11251, para. 13 (“The purpose of high-cost universal service support is to help provide access to telecommunications service in areas where the cost of such service otherwise might be prohibitively expensive.”); *Ninth Report and Order*, 14 FCC Rcd at 20439 para. 12 (“The purpose of high-cost universal service support has always been to enable access to telecommunications service in areas where the cost of such service otherwise would be prohibitively high.”).

⁵⁵ See *Rural Task Force Order*, 16 FCC Rcd at 11246, para. 1.

⁵⁶ *Id.* at 11256, para. 25.

⁵⁷ *Id.* at 11255, para. 22. Specifically, the Commission rebased the indexed cap on the high-cost loop support mechanism, and adopted the safety net additive support and safety valve support mechanisms to increase incentives for rural carriers to invest in their networks. See *id.* at 11262, 11242, 11277, 11284, paras. 38, 42, 79, 97.

⁵⁸ See *Rural Task Force, White Paper 3: Alternative Mechanisms for Sizing a Universal Service Fund for Rural Telephone Companies* at 10, 24 (August 2000). “Under mechanisms using embedded cost, there is a built-in incentive to invest in the network: the more investment, the more support. With forward-looking economic costs, support is calculated without any reference to actual investment. Support will not change regardless of how much or how little a company has actually put into network upgrades.” *Id.* at 24. The Rural Task Force notes that the Commission addressed the lack of an inherent incentive to promote investment in the non-rural mechanism by requiring states to certify that support is being used for the provision, maintenance, and upgrading of facilities and services for which the support is intended, as required by section 254(e) of the Act. See 47 U.S.C. § 254(e); 47 C.F.R. § 54.313. Although the Rural Task Force identified investment incentives as one of the strengths of embedded cost support, the Commission has recognized that the use of embedded costs could discourage prudent

(continued....)

17. To demonstrate that enforcement of the existing rules is not necessary to protect consumers, Iowa Telecom argues that “[t]he manner in which carriers are eligible to receive universal service high-cost loop support has no direct bearing on consumers, and, therefore, the application of the Commission’s rural mechanism on Iowa Telecom is clearly not necessary for the protection of consumers.”⁵⁹ Iowa Telecom claims, however, that forbearing from applying the rural mechanism, and granting its request to receive support based on forward-looking costs, “would greatly benefit Iowa Telecom’s consumer base.”⁶⁰

18. Iowa Telecom argues that granting its request would serve the public interest by ensuring Iowa Telecom’s “concerted investment in its network facilities and deployment of improved services can continue for the foreseeable future.”⁶¹ Iowa Telecom asserts that it has no realistic opportunity under the rural mechanism to recoup its substantial expenses related to investing in historically under-invested communities that require significant capital outlays,⁶² but that “forward-looking economic cost-based support would provide incentives for Iowa Telecom and competitive carriers to invest in [rural Iowa] communities, and would send the appropriate entry and investment signals.”⁶³ Iowa Telecom estimates that it would be eligible to receive approximately \$22.2 million annually under the non-rural mechanism, but that the total effect on the universal service fund would be an increase of only \$7.7 million due to offsetting reductions in support to other non-rural carriers.⁶⁴

19. First, we disagree with Iowa Telecom’s contention that the manner in which carriers are eligible to receive universal service high-cost loop support has no direct bearing on consumers. Iowa Telecom estimates that, if it were to receive support under the non-rural mechanism, non-rural carriers currently receiving support under the non-rural mechanism in ten states would lose a total of approximately \$20.8 million.⁶⁵ Under the non-rural mechanism, each state receives support to the extent that its statewide average forward-looking economic costs, as estimated by the Commission’s cost model,

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network planning because carriers could receive support for inefficient, as well as efficient, investments. See *Universal Service First Report and Order*, 12 FCC Rcd at 8901, para. 228.

⁵⁹ Forbearance Petition at 6.

⁶⁰ *Id.*

⁶¹ *Id.* at 6-7.

⁶² *Id.* at 7.

⁶³ *Id.*

⁶⁴ *Id.*, Appendix at 20-21.

⁶⁵ See *id.* Iowa Telecom’s estimates are based on a model run for Iowa Telecom and a report prepared by QSI Consulting, Inc., (QSI) using Iowa Telecom proprietary data, for which Iowa Telecom requested confidential treatment pursuant to section 0.459 of the Commission’s rules. See Letter from Mimi Dawson, Counsel for Iowa Telecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (dated Feb. 13, 2007) (attaching QSI’s report, “Evaluation of the Impact of Iowa Telecom’s Participation in the Federal Non-Rural High Cost Support Program,” March 2006 (QSI Report)); Letter from Mimi Weyforth Dawson, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (dated Mar. 21, 2007); and Letter from Mimi Weyforth Dawson, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (dated Mar. 21, 2007) (providing data used to run the Commission’s cost model for Iowa Telecom). QSI used 2004 data for Iowa Telecom and relied on the Commission’s publicly available support estimates for the non-rural carriers, which are based on 2002 line counts. See Model Results and Support (2004) State-by-State Summary, Cost and Support Spreadsheet, at <http://www.fcc.gov/wcb/tapd/hcpm/welcome.html>.

exceed a benchmark of two standard deviations above the nationwide average.⁶⁶ Currently, Iowa receives no non-rural support because Qwest, the only non-rural carrier in Iowa, does not have costs that exceed the benchmark. Including Iowa Telecom in the non-rural mechanism would increase the average cost in Iowa so that Qwest also would be eligible to receive support.⁶⁷ Including Iowa Telecom in the non-rural mechanism also would raise the national average cost and increase the standard deviation, which would increase the benchmark.⁶⁸ Because the average costs in the states currently receiving support would not change, they would have fewer costs above the higher benchmark and receive less support. As a result of these changes, Commission staff estimates that the following states would lose a total of approximately \$23.6 million in non-rural support: Mississippi (\$5.9 million), Alabama (\$5 million), Kentucky (\$3.9 million), West Virginia (\$2.2 million), Nebraska (\$1.9 million), Maine (\$1.4 million), Montana (\$939,000), Vermont (\$838,000), Wyoming (\$770,000), and South Dakota (\$772,000).⁶⁹ Consequently, consumers in these states would be affected adversely if the Commission were to forbear from applying the rural mechanism to Iowa Telecom and permit it to receive support under the non-rural mechanism.

20. Although consumers in Iowa may benefit if Iowa Telecom were to receive support under the non-rural mechanism and use the support to invest in its network, section 10(a)(2) of the Act requires that we consider the welfare of all consumers.⁷⁰ State commissions in seven states that would lose support oppose Iowa Telecom's forbearance petition and assert that non-rural carriers and consumers in their states would be harmed.⁷¹ The states argue that granting the Forbearance Petition "will make support insufficient for other non-rural carriers to ensure their rates are reasonably comparable to urban rates nationwide and affordable."⁷² They estimate that "[s]ome states will lose a high percentage of their

⁶⁶ See 47 C.F.R. § 54.309.

⁶⁷ Iowa Telecom estimates that Qwest would be eligible to receive approximately \$6.3 million in non-rural support in Iowa. See Forbearance Petition, Appendix at 21. If a state receives high-cost model support, the support is targeted to high-cost wire centers served by non-rural carriers. If Iowa Telecom were to be included in the model, Iowa's statewide costs would be high enough for Iowa to receive support, and that support would be targeted to both Iowa Telecom's and Qwest's high-cost wire centers.

⁶⁸ See QSI Report at 8.

⁶⁹ Commission staff estimated support amounts using the data filed by Iowa Telecom, the Commission's model results and support amounts posted on the Commission's website, and current lines from the USAC 3Q 2007 filing. See *supra* notes 19 and 65.

⁷⁰ See *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 17 ("Because section 10(a)(2) requires that we consider the welfare of all 'consumers,' we must consider the effect a grant of this Petition will have on consumers who will likely shoulder the effects of any increased contribution obligation since carriers are permitted to recover their contribution obligations from customers.").

⁷¹ See Letter from Shana Knutson, Legal Counsel, Nebraska Public Service Commission; Joel Shifman, Senior Advisor, Maine Public Utilities Commission; Rolayne Ailts Wiest, Commission Attorney, South Dakota Public Utilities Commission; George Young, Associate General Counsel, Vermont Public Service Board; Christopher Campbell, Telecommunications Director, Vermont Department of Public Service; Amy E. Dougherty, Counsel for Kentucky Public Service Commission; Elizabeth H. Ross, Attorney for Vermont Public Service Board, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (dated May 31, 2007) (Five State Letter); Letter from Nielsen Cochran, Chairman, Leonard Bentz, Vice Chairman, Bo Robinson, Commissioner, Mississippi Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (dated May 31, 2007) (Mississippi Letter); Letter from John A. Garner, Chief Administrative Law Judge, Alabama Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (dated May 31, 2007) (Alabama Letter). The states also argue that the Commission should not reduce support in the ten states receiving non-rural support in light of the questions raised by the Tenth Circuit in *Qwest II* about the sufficiency of that support. See Five State Letter at 4; Alabama Letter at 2.

⁷² Five State Letter at 2.

existing support.”⁷³ Mississippi claims that its carriers “will absorb a funding loss approaching five million dollars,” if we grant Iowa Telecom’s requested relief, and is even more concerned “that Mississippi and other state recipients of universal service high cost funding will suffer even larger losses if additional, similarly situated carriers apply for and receive similar treatment.”⁷⁴ Alabama claims that “the ongoing efforts of the affected carriers to make their rates reasonably comparable and affordable for rural subscribers will certainly be impeded.”⁷⁵ Because adding Iowa Telecom to the non-rural mechanism would result in carriers in the ten states that currently receive high-cost model support losing support, we find that many more consumers potentially would be harmed in those states than those who may be helped by a grant of Iowa Telecom’s Forbearance Petition. Accordingly, we disagree with Petitioner that the application of the Commission’s rural mechanism to Iowa Telecom is not necessary for the protection of consumers under section 10(a)(2) of the Act.

21. Second, we also conclude that granting forbearance in this instance would not be consistent with the public interest as required under section 10(a)(3) of the Act. Forbearance would not serve the public interest because, as discussed above, we do not find that the potential benefits to consumers in Iowa would outweigh the harm to consumers in the ten states that would lose support.

22. Moreover, it is not clear to what extent Iowa consumers or the public interest would benefit if Iowa Telecom were to receive support based on its forward-looking economic costs.⁷⁶ Several states argue that providing Iowa Telecom with support based on its forward-looking costs “will actually *reduce* the company’s incentives to invest,” because under the rural mechanism high-cost loop support program, Iowa Telecom can increase its loop costs and become eligible for support.⁷⁷ In contrast, they argue, providing Iowa Telecom with forward-looking support “will actually *eliminate* the existing incentives for investment,” because “its subsequent investment, or lack thereof, would not affect its universal service support levels.”⁷⁸ We agree that support based on Iowa Telecom’s own costs, rather than forward-looking costs, provides a more direct incentive for investment in network infrastructure.

23. In considering whether forbearance will promote competitive market conditions,⁷⁹ we recognize that increasing support to Iowa Telecom could provide incentives to competitive eligible telecommunications carriers (ETCs) to enter the market in Iowa, because, under the “identical support” rule, competitive ETCs receive the same per-line support as the incumbent LECs.⁸⁰ We do not find,

⁷³ *Id.* at 3. The states’ estimates of how much support each state would lose differ somewhat from the estimates of the Commission staff. The states did not have access to the model-related information filed by Iowa Telecom, and they developed independent estimates using publicly available information in Iowa Telecom’s forbearance petition and other sources. *See id.* at 2-3.

⁷⁴ Mississippi Letter at 1.

⁷⁵ Alabama Letter at 1.

⁷⁶ We note that Iowa Telecom is subject to restrictive debt covenants that may limit its ability to make capital expenditures and invest in its network. *See* Iowa Telecommunications Services Inc. – IWA, Form 10-K at 23 (filed Mar. 5, 2007).

⁷⁷ Five State Letter at 6 (emphasis in original) (“This is particularly true if, as Iowa Telecom asserts, serving Iowa is inherently a ‘high cost’ enterprise.”).

⁷⁸ *Id.* at 6-7 (emphasis in original).

⁷⁹ *See* 47 U.S.C. § 160(b).

⁸⁰ *See* Five State Letter at 7 & n.25. (“In sum, Iowa Telecom is arguing that its competitors will invest more if Iowa Telecom receives more support. ... Iowa Telecom fails to mention that it could also improve its competitors’ investment incentives without any forbearance or waiver. Investment incentives for Iowa Telecom’s competitors

(continued....)

however, that this potential increase in competition in Iowa outweighs the potential harm to consumers and to competitive ETCs in the ten states that would lose support. Indeed, under this same logic, competitive ETCs would lose incentives to enter or remain in markets in the ten states that would lose support. In addition, the Joint Board currently is considering whether the Commission should consider abandoning or modifying the identical support or portability rule.⁸¹ Finally, there is evidence that competitors have already entered Iowa Telecom's market to provide broadband service without receiving any universal service support.⁸²

24. We also find that it would not be in the public interest to provide Iowa Telecom with support under the non-rural mechanism due to data problems associated with applying the mechanism to Iowa Telecom. Based on record data, applying the high-cost model to determine Iowa Telecom's forward-looking costs would result in a significant data mismatch. The forward-looking cost estimates used to calculate support for non-rural carriers are based on model results using year-end 2002 line count data, and have been used to provide support since the beginning of 2004.⁸³ Although the per-line support amounts are based on these cost estimates, total support amounts are adjusted to reflect the number of lines reported by non-rural carriers each quarter. Instead of using year-end 2002 line count data, Iowa Telecom used year-end 2004 line count data to estimate its forward-looking costs (presumably because this was the most recent data available when Iowa Telecom was creating its estimate).⁸⁴ Non-rural carriers are required to file line count data at the wire center level for purposes of using the high-cost model to calculate support. As a rural carrier, Iowa Telecom is not required to file line count data at the wire center level,⁸⁵ and did not provide (and would have had no reason to retain) its 2002 line count data by wire center.⁸⁶ Thus, relying on Petitioner's filing would result in the Commission mixing line count

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would also improve if Iowa Telecom simply upgraded its own network with its own capital and became eligible for High Cost Loop support.”).

⁸¹ *Joint Board 2007 Public Notice*, 22 FCC Rcd at 9026, para. 7.

⁸² See Sprint Nextel Corporation's Opposition to Petitions for Forbearance and Waiver, at 3-4 (filed July 3, 2006) (“Competitors are willing and able to provide service in competition with Iowa Telecom, even without having access to the subsidies that Iowa Telecom seeks. Sprint Nextel is a facilities-based provider that has sought to provide competitive telephony service to consumers in Iowa Telecom's market. Iowa Telecom, however, has sought to block, deter, or delay Sprint Nextel's entry as much as possible.”); Letter from Joseph E. Young, Senior Vice President and General Counsel, Mediacom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 at 2 (filed May 31, 2007) (Mediacom Letter) (“Mediacom has gone to great expense to expand and upgrade its facilities – without federal subsidies – and offers broadband service through much of Iowa Telecom's territory.”). Mediacom also alleges that, if competition does not exist in portions of Iowa Telecom's study areas, it is the result of Iowa Telecom's failure to interconnect with competitors, despite being ordered to do so by the Iowa Utilities Board. See Mediacom Letter at 5 and attached order, *Sprint Communications Company, L.P. and MCC Telephony of Iowa, Inc. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Final Decision and Order Allocating Costs (Iowa Utilities Board, rel. Nov. 9, 2006).

⁸³ See Model Results and Support (2004) State-by-State Summary, Cost and Support Spreadsheet, at <http://www.fcc.gov/wcb/tapd/hcpm/welcome.html>; see also *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, 18 FCC Rcd 26639 (Wireline Comp. Bur. 2003) (2004 Line Counts Update Order).

⁸⁴ See QSI Report at 3.

⁸⁵ See 47 U.S.C. §§ 36.611, 36.612.

⁸⁶ Iowa Telecom's 2004 line count data could be used to estimate its 2002 line count data for high-cost loops and special access lines, but this would introduce inaccuracies because lines do not increase or decrease at the same rate across wire centers.

data from 2002 and 2004, and determining support for all non-rural carriers based on this mismatched data.

25. Although the Commission could rerun the model for the non-rural carriers using year-end 2004 line count data, or could rerun the model for the non-rural carriers and Iowa Telecom using the most recent data, updating line counts without making other changes to the model raises significant issues.⁸⁷ For example, in 2004, the Bureau sought comment on whether it would be appropriate to defer updating line counts until the Commission addresses issues raised by commenters in the past *Line Counts Update* proceedings.⁸⁸ Unlike in previous years, in 2004 no commenter supported updating line counts, and all parties filing comments in that proceeding urged us to defer line count updates until the issues that have been raised about the model and its inputs can be addressed by the Commission. In response, the Bureau took no action to update line counts and has not further sought to update the line counts used to estimate forward-looking costs under the non-rural mechanism.

26. When the Commission updated line counts in the past, it always has sought comment on updating lines and provided interested parties with an opportunity to comment.⁸⁹ If the Commission were to propose using updated line counts in the model to determine non-rural support, it would seek comment on doing so, consistent with past practice.

27. Because of the problems associated with updating line counts in the model, we conclude that it would not be in the public interest to update the cost estimates of other rural carriers so they would be consistent with Iowa Telecom's estimates. We also do not find it in the public interest to use line counts from different years for Iowa Telecom and other non-rural carriers.

2. Section 10(a)(1)

28. Although we need not reach a conclusion regarding compliance with section 10(a)(1) because of our conclusion that Iowa Telecom's forbearance request fails to demonstrate compliance with sections 10(a)(2) and (3) of the Act, we nevertheless find that Iowa Telecom has failed to show compliance with section 10(a)(1). Specifically, we find that Iowa Telecom has not shown that enforcement of the regulations is not necessary to ensure that Iowa Telecom's charges or practices remain just and reasonable and are not unjustly or unreasonably discriminatory.⁹⁰ Iowa Telecom claims that "forbearance would be

⁸⁷ Since the model's original inputs were adopted in the *Tenth Report and Order*, line counts have been updated for purposes of estimating forward-looking costs in the 2001, 2002, and 2004 *Line Counts Update Orders*. See generally *Tenth Report and Order*, 14 FCC Rcd 20156; See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order, 15 FCC Rcd 23960 (Com. Car. Bur. 2000) (2001 *Line Counts Update Order*); *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order, 16 FCC Rcd 22418 (Com. Car. Bur. 2001) (2002 *Line Counts Update Order*); *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, 18 FCC Rcd 26639 (Wireline Comp. Bur. 2003) (2004 *Line Counts Update Order*). Cost estimates using the updated lines were then used to determine support for the years beginning 2001, 2002, and 2004, respectively. In the *Line Counts Update* proceedings, various commenters have criticized the Bureau's practice of updating line counts annually without updating customer location data, and the methodology for including the costs of high-capacity lines, especially special access lines. Updating line counts also would likely raise concerns about the vintage of other inputs in the model that have not been updated since they were adopted.

⁸⁸ See *Wireline Competition Bureau Seeks Comment on Whether to Update Line Counts and Other Limited Information Used in Calculating High-Cost Universal Service Support for Non-Rural Carriers*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 19941 (Wireline Comp. Bur. 2004) (2005 *Line Counts Update Public Notice*). The Bureau also sought comment on whether it should update line counts, consistent with past practice.

⁸⁹ See 2004 *Line Counts Update Public Notice*, 18 FCC Rcd at 15534, nn.1-3.

⁹⁰ 47 U.S.C. § 160(a)(1).

invaluable to Iowa Telecom's ability to maintain just and reasonable rates in the long-term."⁹¹ Without federal high-cost support, Iowa Telecom claims that it "will likely face a difficult decision in the future as to whether to implement further retail rate increases at the risk of creating potential affordability problems with its customers, and/or forgoing (or significantly delaying) network investment given the significant ongoing cost of such efforts. Either alternative has potential adverse consequences for the reasonableness of end-user rates, the terms and conditions of service offerings, and the quality of those services."⁹² However, as discussed above, grant of Iowa Telecom's forbearance request would not provide it with any federal high-cost support.⁹³ Iowa Telecom erroneously relies on the fact that the non-rural high-cost support mechanism is a default into which Iowa Telecom would fall if we were to forbear from application of the rural high-cost support mechanism. This is not the case. As we explain above, forbearance from the rural high-cost support mechanism does not place Iowa Telecom in the non-rural mechanism.⁹⁴ Further, even if Iowa Telecom's belief was correct and the non-rural high-cost support mechanism was the default support mechanism, Iowa Telecom's petition seeks forbearance from both the rural and non-rural support mechanism rules.⁹⁵ Grant of Iowa Telecom's forbearance request would leave it without the ability to receive support under either the rural or non-rural high-cost support mechanisms, negating Iowa Telecom's claims that the support it would receive after grant of its forbearance request would allow it to retain reasonable rates.

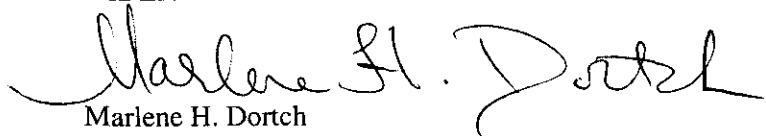
IV. CONCLUSION

29. As discussed above, grant of Iowa Telecom's forbearance request would not afford Iowa Telecom the relief that it is seeking, in that forbearing from the rule sections requested by Iowa Telecom would not allow Iowa Telecom to receive high-cost universal service support pursuant to the non-rural mechanism. Even if a grant of its forbearance petition would afford it the relief it seeks, however, Iowa Telecom has not demonstrated that forbearance from the rural high-cost universal service mechanism and application of the non-rural mechanism meet the requirements of section 10 of the Act.

V. ORDERING CLAUSE

30. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i), 10, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, and 254, the petition for forbearance filed by Iowa Telecommunication Services, Inc. on May 8, 2006, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

⁹¹ Forbearance Petition at 4.

⁹² *Id.* at 5.

⁹³ *See supra* paras. 7-12.

⁹⁴ *See supra* paras. 9-12.

⁹⁵ *See supra* para. 7-8.

APPENDIX**Parties Filing Comments and Reply Comments**

Comments:

CommenterAbbreviation

AT&T Inc.
CTIA – The Wireless Association®
Embarq Corporation
Independent Telephone and Telecommunications Alliance
Iowa Utilities Board
National Association of State Utility Consumer Advocates
Sprint Nextel Corporation

AT&T
CTIA
Embarq
ITTA
IUB
NASUCA
Sprint

Reply Comments:

CommenterAbbreviation

Iowa Telecommunications Services, Inc.

Iowa Telecom